

[Submitting Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE JUUL LABS, INC., MARKETING,  
SALES PRACTICES, AND PRODUCTS  
LIABILITY LITIGATION

This Document Relates to:

*San Francisco Unified School District v.  
JUUL Labs, Inc., et al.*

Case No. 3:19-cv-08177-WHO

Case No. 19-md-02913-WHO

TRIAL BRIEF RE: ADMISSIBILITY OF  
EXHIBIT 5140

**Judge: Hon. William H. Orrick**

**Date: April 28, 2023**

**Time: 8 a.m.**

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San Francisco Unified School District (“SFUSD”) respectfully submits this trial brief addressing the admissibility of Exhibit 5140. Counsel for Altria has indicated that Altria intends to object to this exhibit on hearsay grounds. The exhibit includes both an article and a video of a news report from ABC Channel 7 about JUUL use in San Francisco schools. Erica Lingrell, an SFUSD administrator, and Kaya Lehr-Love, a former SFUSD student, are among those interviewed in the story. Both Lingrell and Lehr-Love will be witnesses for SFUSD in this trial.

The story aired on March 8, 2018. It is titled: “SF Students say JUUL vaporizer easy to use at school.” The story provides some basic background on JUUL use and quotes Ms. Lingrell as stating: “We want our young people to know that electronic vapor products are not safe.” Lehr-Love, who was a Youth Outreach Worker for SFUSD, was quoted as saying: “This is just one of their ways to get you into smoking; it’s just a marketing thing.”<sup>1</sup>

SFUSD intends to use the clip with Ms. Lingrell’s testimony. Plaintiff acknowledges that

<sup>1</sup> The story and the video are available at: <https://abc7news.com/juul-vaporizers-at-schools-san-francisco-cigarette-like-nicotine-levels-in/3192043/> (last visited April 27, 2023).

1 it is not admissible for the truth of the matter asserted. However, the Court should admit the story  
 2 for a non-hearsay purpose. Plaintiff is not using the clip to show that students were vaping at  
 3 SFUSD. That fact is not in serious doubt. Rather, Plaintiff intends to show the clip to demonstrate  
 4 that SFUSD was trying to combat vaping as the e-cigarette crisis was in its early stages in schools.  
 5 Ms. Lingrell will testify that she tried to respond positively to media requests as much as possible,  
 6 to get the word out about the dangers of e-cigarettes. The fact that SFUSD was making those efforts  
 7 is relevant to SFUSD's damages, regardless of the underlying words. This is particularly true given  
 8 that Altria alleges that SFUSD has failed to mitigate its damages. The fact that SFUSD was making  
 9 public, anti-vaping statements in March 2018 shows that SFUSD understood that the vaping  
 10 problem needed to be addressed—and that it was, in fact, being addressed.<sup>2</sup>

11 Courts allow media reports, in the form of videos and articles, into evidence if they are  
 12 offered for a non-hearsay purpose. *See, e.g., United States v. Lewis*, 62 Fed. Appx. 757, 761 (9th  
 13 Cir. Feb. 28, 2003) (holding that district court “did not abuse its discretion because the government  
 14 introduced the partially redacted article to show Appellants’ knowledge and not for the truth of the  
 15 allegations in the article”); *Hiram v. United States*, 354 F.2d 4, 7 (9th Cir. 1965) (“The newspaper  
 16 article was not hearsay since it was not offered for the truth of the matter stated therein but only to  
 17 show notice to the appellant, as the district court’s limiting instruction to the jury correctly  
 18 stated.”); *Paradis v. Brady*, No. CV-03-150-N-BLW, 2006 WL 8445418, at \*2 (D. Idaho Mar. 31,  
 19 2006) (allowing DVD of newscast for non-hearsay purposes).

20 This Court should similarly allow this short video to show that SFUSD was taking action  
 21 in March 2018. SFUSD is not now feigning concern for purposes of litigation. It has long been  
 22 concerned about vaping on its campuses. In this case, SFUSD’s anti-vaping action took the form  
 23 of speaking publicly about the issue. This statement has significant evidentiary value for the fact  
 24 that the statement was made. *See CytoSport, Inc. v. Vital Pharms., Inc.*, 617 F. Supp. 2d 1051, 1074

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25  
 26 <sup>2</sup> Lehr-Love’s comment is after Lingrell’s in the report, so if the Court is concerned about her  
 27 comment, one option would be to permit the report from the beginning through Lingrell’s  
 28 story quotes JLI as saying it “strongly condemns” vaping by youth, and the story lays out various  
 ways in which JLI says it is trying to reduce youth vaping. It is a balanced story.

(E.D. Cal.), *aff'd*, 348 F. App'x 288 (9th Cir. 2009) (statement introduced to show that it was made is not hearsay).

For these reasons, this Court should admit Exhibit 5140, including the article and the video. The story is relevant to show that SFUSD was trying to battle the vaping crisis in March 2018. It is not offered for the truth of the matter asserted. If the Court deems it necessary, the Court could offer a limiting instruction when the video is played.

**Dated:** April 27, 2023

Respectfully submitted,

By: /s/ Thomas P. Cartmell

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send notification of the filing to all counsel of record.

By: /s/ Thomas P. Cartmell  
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